

NO. 02-0427

---

**In The Supreme Court of Texas**

---

**WEST ORANGE-COVE CONSOLIDATED I.S.D., ET AL**

**Petitioner**

**v.**

**FELIPE ALANIS, IN HIS OFFICIAL CAPACITY AS  
THE COMMISSIONER OF EDUCATION, ET AL,**

**Respondents.**

02-0427

---

**ALVARADO INTERVENORS' RESPONSE  
TO PETITION FOR REVIEW**

---

**Doug W. Ray  
Randall B. Wood  
RAY, WOOD & BONILLA, LLP.  
2700 Bee Caves Road #200  
Austin, Texas 78746  
(512) 328-8877  
(512) 328-1156 (Fax)  
ATTORNEYS FOR ALVARADO  
INTERVENORS**

BY *Am8p* DEPUTY

ANDREW WEBER, CLERK

2001 AUG 21 PM 2:55

FILED  
SUPREME COURT  
OF TEXAS

---

**In The Supreme Court of Texas**

---

WEST ORANGE-COVE CONSOLIDATED I.S.D., ET AL.  
Petitioners,

v.

FELIPE ALANIS, IN HIS OFFICIAL CAPACITY AS  
THE COMMISSIONER OF EDUCATION, ET AL,  
Respondents.

---

**ALVARADO INTERVENORS' RESPONSE  
TO PETITION FOR REVIEW**

---

Doug W. Ray  
Randall B. Wood  
RAY, WOOD & BONILLA, L.L.P.  
2700 Bee Caves Road #200  
Austin, Texas 78746  
(512) 328-8877  
(512) 328-1156 (Fax)  
ATTORNEYS FOR ALVARADO  
INTERVENORS

## TABLE OF CONTENTS

TABLE OF CONTENTS .....	i
TABLE OF AUTHORITIES .....	ii
RESPONDENTS' ISSUES	
ISSUE ONE .....	1
ISSUE TWO .....	1
ISSUE THREE .....	1
STATEMENT OF FACTS .....	2
SUMMARY OF THE ARGUMENT .....	4
ARGUMENT AND AUTHORITIES	
ISSUE ONE (RESTATED) .....	4
ISSUE TWO (RESTATED) .....	5
ISSUE THREE (RESTATED) .....	6
PRAYER .....	9
CERTIFICATE OF SERVICE .....	10

## TABLE OF AUTHORITIES

Cases	Page
<i>Edgewood Ind. Sch. Dist. v. Kirby</i> , 777 S.W.2d 391 (Tex. 1989) ( <i>Edgewood I</i> ).....	8
<i>Edgewood Indep. Sch. Dist. v. Meno</i> , 917 S.W.2d 717 (Tex. 1995) ( <i>Edgewood IV</i> ).....	2, 8
<i>Mumme v. Marrs</i> , 120 Tex. 383, 40 S.W.2d 31 (1931).....	7
<i>Williams v. Muse</i> , 369 S.W.2d 467 (Tex. Civ. App. — Eastland, writ ref'd n.r.e.) .....	5
 <b>Statutes</b>	
TEX. CONST., Article VII, section 1.....	6
TEX. CONST., Article VIII, section 1-e.....	6

f:\clients\08046\00002\List.doc

## RESPONDENTS' ISSUES

ISSUE ONE: Unless the Court overrules prior precedent, this case is not important to the jurisprudence of this State.

ISSUE TWO: Petitioners were not entitled to an opportunity to replead.

ISSUE THREE: The court of appeals used the proper analysis in affirming the trial court's dismissal of Petitioner's claim.

## STATEMENT OF FACTS

The Constitution places the duty on the Legislature to make suitable provision for the general diffusion of knowledge through a system of free public schools. TEX. CONST. ART. VII, § 1. As part of this constitutional duty, the Legislature has enacted Chapter 39 of the Texas Education Code, which sets out criteria for accrediting school districts in this state. It has also enacted Chapter 41, which governs most aspects of school finance aspects Petitioners. At the time this Court upheld the current financing scheme, Petitioners were entitled to access only \$280,000 of wealth per weighted student for all purposes. *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 728 (Tex. 1995) (*Edgewood IV*). In 1997, the Legislature removed the cap on taxes to repay debt, thus freeing up additional revenue for Petitioners.<sup>1</sup> In 1999, the Legislature increased the cap from \$280,000 to \$295,000.<sup>2</sup> In 2001, the Legislature increased the cap from \$295,000 to \$300,000, and, starting September 1, 2002, the cap will be raised to \$305,000.<sup>3</sup> Despite these increases in Petitioners access to revenues, they now come to this Court asking it to enact new accreditation standards that they say will cost more to achieve than they can raise on \$305,000 of wealth

---

<sup>1</sup> See Act of May 31, 1997, 75<sup>th</sup> Leg., R.S., ch. 592, § 1.02, 1997 Tex. Gen. Laws 2061, 2062.

<sup>2</sup> See Act of May 30, 1999, 76<sup>th</sup> Leg., R.S., ch. 396, § 1.02, 1999 Tex. Gen. Laws 2471, 2472.

<sup>3</sup> See Act of May 28, 2001, 77<sup>th</sup> Leg., R.S., ch. 1187, § 2.02, .03, 2001 Tex. Gen. Laws 2667, 2678.

per weighted student for maintenance and operations and unlimited access to their wealth for debt repayment.

## SUMMARY OF THE ARGUMENT

This case is important to the jurisprudence of this State only if the Court departs from established precedent and decides that it, rather than the Legislature, shall be the branch of government responsible for setting accreditation standards and determining the cost to achieve those standards. Petitioners' claims can go forward only if the Court adopts this position and, unless it does so, Petitioners have no right to amend their pleadings because they cannot plead that they are unable to meet the standards set by the Legislature with the tax revenue available to them. Because this is the only claim open to them and they are unable to plead the necessary elements, the court of appeals correctly affirmed the trial court's dismissal of Petitioners' suit.

## ARGUMENT AND AUTHORITIES

**ISSUE ONE (RESTATED): Unless the Court overrules prior precedent, this case is not important to the jurisprudence of this State.**

Contrary to Petitioners' assertions, this case as it stands right now is meaningful to the jurisprudence of the State only if this Court overrules its own longstanding precedent and agrees with Petitioners that this Court, rather than the Legislature, will set accreditation standards for Texas school districts and determine how much money must be spent for each

student in order to meet those standards. Absent such a sea change in the jurisprudence of the State, this particular case is nothing but a sideshow in Texas' long march towards the most equitable school finance system in the State's history. Indeed, as properly viewed by the court of appeals, this case is quite mundane and does not deserve to go beyond the pleading stage.

**ISSUE TWO (RESTATED): Petitioners were not entitled to an opportunity to replead.**

As to Petitioners' right to replead, they are correct that ordinarily a party must be given a chance to replead, if it can do so, upon the granting of a special exception. As the court of appeals correctly noted, however, an opportunity to replead is unnecessary when the plaintiff cannot plead anything to overcome the special exception. *See, e.g., Williams v. Muse*, 369 S.W.2d 467, 470-71 (Tex. Civ. App.—Eastland, writ ref'd n.r.e.) (holding that where the plaintiff could not factually plead that a written contract existed, which fact was necessary to state a cognizable claim, the trial court did not err by sustaining the defendant's special exceptions without giving the plaintiff an opportunity to amend). Petitioners themselves must concede that they do not need a \$1.50 tax rate in order to meet what they describe as the lenient State accreditation standards. (*Pet. for Rev.* at 13, n.15). As the trial court stated, "[i]f the test is accreditation standards, the

plaintiffs have no wrong because the districts are satisfying those standards on less than \$1.50.” (CR 252). As such, under the court of appeal’s holding, Petitioners have no right to replead because they simply cannot plead that they are unable to achieve accreditation at any tax rate less than \$1.50.

**ISSUE THREE (RESTATED): The court of appeals used the proper analysis in affirming the trial court’s dismissal of Petitioner’s claim.**

Knowing that they cannot plead a valid claim, Petitioners strongly urge this Court to supplant the Legislature as the branch of government responsible for setting accreditation standards and to determine the precise dollar figure necessary to achieve these judicially-defined benchmarks. Petitioners tacitly admit, as they must, that they have a cognizable claim only if the judiciary ignores the floor established by the Legislature and mandates its own floor. Such a holding would not only depart from this Court’s long-held precedents, but is a completely unnecessary option to consider in a tax dispute and is best left for deliberation when and if a party brings a true adequacy claim under the “suitable provision” clause of Article VII, section 1.

The primary focus in any case under Article VIII, section 1-e is not educational policy, but whether or not the Legislature has imposed an ad

valorem tax on property in this State. One way for the Legislature to impose such a tax is to have a local governmental entity actually impose and collect the tax, but then give that entity no discretion in setting the tax rate. This could be accomplished by setting a maximum tax rate that raises insufficient revenue to accomplish the mandates imposed by the Legislature, such that the entity would always have to tax at the maximum rate. This is essentially what Petitioners claim is occurring in this case. However, they want to ignore the accreditation standards actually imposed on them by the Legislature and instead have this Court determine the accreditation standards the Legislature should have enacted. Petitioners realize that they can meet the mandates imposed on them by the Legislature at a tax rate below the maximum prescribed by state law. It is for this reason that they want the judiciary to declare new benchmarks that the Legislature should have adopted and assign a specific dollar figure to those accreditation levels that would require a tax rate in excess of the current legal maximum. It is precisely this type of inquiry that this Court has long refused to engage in.

In *Mumme v. Marrs*, 120 Tex. 383, 40 S.W.2d 31, 36 (1931), this Court first enunciated its rule that it was the Legislature that had "the mandatory duty to make suitable provision" for a state educational system and that

the Legislature could use whatever "methods, restrictions, and regulations" it desired so long as they were not "so arbitrary as to be violative of the constitutional rights of the citizen." This Court reiterated its limited supervisory role in *Edgewood IV* by stating that the Legislature would violate the "suitable provision" clause only if it "substantially defaulted on its responsibility such that Texas school children were denied access to that education needed to participate fully in the social, economic, and educational opportunities available in Texas." *Edgewood IV* at 736. Indeed, this Court has consistently refused to tell the Legislature how to comply with its constitutional duties, but instead has taken the position that if the Legislature violates the "efficient" or "suitable provision" clauses, this Court's only duty is "to say so." *Edgewood Ind. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 394 (Tex. 1989) (*Edgewood I*).

If this Court is going to overrule these precedents and say not only that the Legislature has failed to make suitable provision for a general diffusion of knowledge, but that a general diffusion of knowledge costs a certain dollar amount per student, this is not the case to take such a dramatic step. If the Legislature has enacted a state property tax, then the focus should be on what the Legislature has actually done and not on what Petitioners claim it should have done. This more limited inquiry

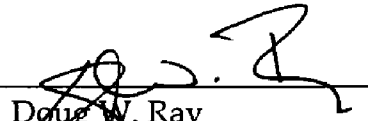
bypasses the immensely complex process of having the judiciary formulate accreditation standards and instead looks to the simple fact that all but one of the districts in the State met the Legislature's accreditation standards in 2001, and that district was not one of the Petitioners. Under this standard, Petitioners' case is not important to the jurisprudence of the State and requires no review by this Court.

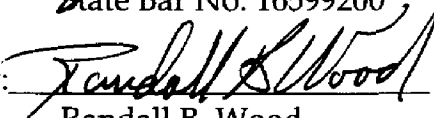
**PRAYER**

Based upon the foregoing, the Alvarado Intervenors respectfully request this Court to deny the petition for review.

Respectfully submitted,

RAY, WOOD & BONILLA, L.L.P.

By:   
Doug W. Ray  
State Bar No. 16599200

By:   
Randall B. Wood  
State Bar No. 21905000

P.O. Box 165001  
Austin, Texas 78716-5001  
(512) 328-8877  
(512) 328-1156 (Telecopier)  
**ATTORNEYS FOR ALVARADO  
INTERVENORS**

## CERTIFICATE OF SERVICE

A true and correct copy of the Alvarado Intervenor's Response to Petition for Review was mailed by certified mail, return receipt requested to the following:

George W. Bramblett, Jr.  
Nina Cortell  
Carrie L. Huff  
Charles G. Orr  
HAYNES AND BOONE, LLP  
901 Main Street, Suite 3100  
Dallas, Texas 75202-3789

W. Wade Porter  
HAYES AND BOONE, LLP  
600 Congress Avenue, Ste. 1600  
Austin, Texas 78701-3236

Mark R. Trachtenberg  
HAYNES AND BOONE, LLP  
1000 Louisiana Street, Suite 4300  
Houston, Texas 77002-5012

**Plaintiffs/Appellants/Petitioners: West Orange-Cove Consolidated I.S.D., Coppell I.S.D., La Porte I.S.D., and Port Neches-Groves I.S.D.**

John Cornyn, Attorney General for the State of Texas

Andy Taylor, First Assistant Attorney General  
Jeffrey S. Boyd, Deputy Attorney General for Litigation  
Toni Hunter, Chief, General Litigation Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548

**Defendants/Appellees/Respondents: Felipe Alanis in his official capacity as the Commissioner of Education, the Texas Education Agency, Carol Keeton Rylander in her official capacity as Texas Comptroller of Public Accounts, and the Texas State Board of Education**

Leticia M. Saucedo

Nina Perales

Joseph P. Berra

MALDEF

140 E. Houston Street, Suite 300

San Antonio, Texas 78205

**Edgewood Intervenors/Appellees/Respondents: Edgewood I.S.D.,  
Ysleta I.S.D., Laredo I.S.D., San Elizario I.S.D., Socorro I.S.D., and  
South San Antonio I.S.D.**

on the 21<sup>st</sup> day of August, 2002.

  
Doug W. Ray

f:\clients\08046\00002\Response.doc